# IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

## SPECIAL CIVIL APPLICATION No. 12147 of 2005

**For Approval and Signature:**

**HONOURABLE MR.JUSTICE A.M.KAPADIA**

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

**PATEL MADHABHAI DHULABHAI - Petitioner(s)**

**Versus**

**THAKORE KANAJI LALAJI & 4 - Respondent(s)**

==========

**Appearance :**

MR NIRAL R MEHTA for Petitioner No(s).: 1.

MR YF MEHTA for Respondent No(s).: 1, 2, 3, 4,5.

==========

**CORAM : HONOURABLE MR.JUSTICE A.M.KAPADIA**

**Date : 22/08/2005**

**ORAL JUDGMENT**

1. By filing instant petition under Article 227 of the Constitution, the petitioner seeks to challenge

the order dated 30.4.2005 rendered in Civil Misc. Appeal No.15 of 2003 by the learned District Judge, Gandhinagar by which the appeal filed by the respondents against the petitioner came to be disposed of in following terms:

> “(1). The learned advocates for the parties have conveyed to this Court by filing Pursis vide exh.35 that if the trial Court is directed to expedite the suit being R.C.S. No. 99/02 without being influenced by the order passed below exh.5 and during the pendency of the suit, both the parties to maintain status quo, they shall be satisfied with these directions if the order of the learned trial Judge is modified to the said effect. It is prima facie proved that it is the plaintiffs who are in possession of the suit property. Therefore, order of the trial Court is partly reversed. The parties have by consent agreed to maintain status quo of the property till suit is finally disposed off. With these observations, this appeal under Order-43 Rule-1 ( r ) of C.P.C. Stands disposed off.

(2) The trial Court to take up the suit for expeditious hearing and disposed off the same preferably on or before 31st March 2006, meanwhile, the parties to maintain status quo of the suit property i.e., plaintiffs shall not transfer, alienate, or to sell the suit property to any other persons and the defendant shall not disturbed the possession of the plaintiff.

The parties to bear their own costs.

R & P be sent to the trial court forthwith."

2. The respondents herein original/plaintiffs have filed a suit for permanent injunction against the petitioner/original defendant being RCS No. 99 of 2002 in the Court of learned Civil Judge (JD), Dahegam, District Gandhinagar. Along with the suit, application ex.5 was also moved claiming temporary injunction during the pendency of the suit. In the said suit, the petitioner has filed written statement against the plaint as well as application Ex.5 inter alia denying all the contentions raised by the

respondents. It is contended that the satta khat was made for the land bearing S.No.387 (1) admeasuring 6 Acres which was originally owned by Hemaji Bhaiji Thakore who happened to be the grandfather of the respondents/original plaintiffs. It is also stated by the petitioner that out of the total 6 acres of land, 3 acres of land came to be sold out to the petitioner by Hemaji Bhaiji Thakore vide registered sale deed on 2.6.1969 which was within the knowledge of Lalji Hemaji who was the father of the original plaintiffs. In the said registered sale deed Lalji Hemaji, father of the original plaintiffs has also signed as a witness and since then the petitioner is in possession of the aforesaid 3 acres of land out of total 6 acres of land. Thereafter remaining 3 acres of land came to be sold out to the petitioner on 1.2.1979 at the rate of Rs.3500/- per vigha by Lalji Hemaji, father of the original plaintiffs. Thereafter name of the petitioner came to be entered into the Pani Patrak on the basis of the said registered sale deeds.

3. The learned trial Judge who heard the

application Ex.5 filed by the respondents, by relying upon the documents at mark 24/1 and 30/1 which are the registered sale deeds upon which possession had been handed over to the petitioner way back in the year 1969, rejected the same by holding that prima facie case exists in favour of the petitioner.

4. Aggrieved thereby the respondents preferred Civil Misc. Appeal No.15 of 2003 in the District Court. In the said appeal both the parties filed a pursis vide Ex.35 inter alia contending that both the parties will abide by the order passed by the learned trial Judge with regard to the suit property till the final disposal of the suit and in view of the said pursis, they urged that the appeal may be disposed of.

5. The learned District Judge, Gandhinagar who heard Civil Misc. Appeal No.15 of 2003 has disposed of the appeal on the basis of the pursis Ex.35 holding inter alia that it is prima facie proved that the respondents are in possession of the suit property and directed the trial court to decide and

dispose of the suit expeditiously preferably on or before 31.3.2006 and also directed the parties to maintain status quo of the property i.e., the respondents/plaintiffs shall not transfer, alienate or sell the suit property to any other person and the petitioner shall not disturb the possession of the respondents and accordingly the order passed by the learned trial Judge is modified to the said effect which has given rise to the present appeal.

6. This Court has considered the submissions advanced by Mr. Niral R. Mehta, learned advocate of the petitioner and Mr. Y.F. Mehta, learned advocate of the respondents, perused the impugned order dated 30.4.2005 rendered in Civil Misc. Appeal No.15 of 2003 by the learned District Judge, Gandhinagar as well as the order dated 28.2.2003 rendered below application Ex.5 in RCS No.99 of 2002 by the learned Civil Judge (JD), Dahegam.

7. It may be noted that the learned District Judge was urged to pass order on the basis of the pursis Ex.35. On perusal of pursis Ex.35, it is seen that

both the parties have agreed to maintains status quo as per the order passed by the trial court and urged the learned District Judge to dispose of the appeal. Notwithstanding the aforesaid fact, the learned District Judge has observed in the impugned order that it is prima facie proved that the respondents are in possession of the suit property and therefore order of the trial court has been partly modified. Thereafter the learned District Judge has observed that the parties have by consent agreed to maintain status quo of the property till suit is finally dispose of. It was further directed that the respondents shall not transfer, alienate or transfer the suit property to any other person and the petitioner shall not disturb the possession of the respondents.

8. The aforesaid finding is absolutely erroneous. By the pursis Ex.35 what was urged by both the parties was that the appeal may be disposed of by directing the parties to maintain status quo as per the order passed by the trial court. On perusal of the order passed by the trial court, it in terms

stated that the application Ex.5 filed by the respondents praying for ad-interim injunction is rejected. Therefore, according to this court, the learned District Judge has travelled beyond the request made by both the parties by filing pursis Ex.35 pursis.

9. In aforesaid view of the matter, the impugned order dated 30/4/2005 passed by the learned District Judge, Gandhinagar in Civil Misc. appeal No.15 of 2003 deserves to be quashed and set aside by allowing this petition and restoring the order dated 28.2.2003 recorded below application Ex.5 in RCS No.99 of 2002 by the learned Civil Judge (JD), Dahegam.

10. For the foregoing reasons, the petition succeeds and accordingly it is allowed with no order as to costs, the result of which is that the order dated 30.4.2005 rendered in Civil Misc. Appeal No.15 of 2003 by the learned District Judge, Gandhinagar is hereby quashed and set aside and the order dated 28.2.2003 rendered below application Ex.5 in Regular Civil Suit No.99 of 2002 by the learned Civil Judge

(JD), Dahegam, District Gandhinagar is hereby restored and maintained. So far as the direction of the learned District Judge, Gandhinagar with regard to expeditiously disposal of the suit is concerned, it is not disturbed.

11. Rule is made absolute to the aforesaid extent.

District service is permitted.

(A.M. Kapadia, J.)

...

(karan)